

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**IN RE: TESTOSTERONE REPLACEMENT  
THERAPY PRODUCTS LIABILITY  
LITIGATION**

**HONORABLE MATTHEW F. KENELLY**

**MDL NO. 2545**

**CASE NO. 1:14-CV-1748**

**Related Case: 15-7791**

**PLAINTIFF JOSE A. BRACETTI-AYALA MOTION TO SHOW CAUSE AND  
REQUEST FOR REMEDY**

**TO THE HONORABLE COURT:**

**COMES NOW** Plaintiff **JOSE A. BRACETTI-AYALA**, through the undersigned attorneys and very respectfully STATES and PRAYS as follows:

1. Plaintiff showed cause, as ordered in CMO 110, one day after the due date of April 27, 2018. (Plaintiff in fact showed cause on April 28, 2018 and requested an extension of time to comply with CMO 85, due to the humanitarian crisis of Hurricane Maria in Puerto Rico and the fact that the undersigned attorney had just made contact with Plaintiff after Hurricane Maria devastated the Island of Puerto Rico.<sup>1</sup> See, Docket 2581).

2. Then, this Court notified CMO 118 stating that: “[t]he plaintiffs in the cases listed below filed no response whatsoever following the Court's entry of the order to show cause.” This Court dismissed cases on Appendix A. (See Docket 2626). Plaintiff's case **was not dismissed** by CMO 118, since Plaintiff Jose A. Bracetti-Ayala was not listed in Appendix A.

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<sup>1</sup> Hurricane Maria hit Puerto Rico on September 20, 2017 and it took more than 3 months for almost half the island to recover power. CMO 85 was notified on 12/08/2017. (See Docket 2295)

3. Nevertheless, in such CMO 118, this Court, in a foot note, indicated: *“The Court will address in a separate order cases in which a response to the order to show cause was filed after April 27, 2018, as well as a small number of cases in which there was an earlier stipulation or motion to voluntarily dismiss the case or certain defendants.”*

4. Court notified CMO 119 and ordered a hearing *“on all filed and hereafter filed motions seeking reconsideration of dismissals under CMO 118 for 5/31/2018 at 2:00 PM.”*

5. Then, this Court addressed those cases in which a response to the order to show cause was filed after April 27, 2018, and Plaintiff was ordered to appear through their moving counsel for the hearing to be held on May 31, 2018 as ordered in CMO 119. (See, Docket 2632).

6. Plaintiff respectfully understands that the only reason why the appearance on May 31, 2018 was ordered is because of his lack of showing just cause for complying with CMO 110 one day after the date Court ordered to do so.

7. Plaintiff Jose Bracetti Ayala had to move from the island of Puerto Rico and now lives and receives treatment in the state of Florida, USA.

8. Plaintiff fully complied with CMO 85 on May 12, 2018, produced the Supplemental PFF to defendants and informed the Court. (See, Docket 2625). Plaintiff Bracetti has always been diligent in his case. He filed his case timely and had notified two (2) PFF to defendants since 2015 (the first one was produced on 12/2/2015 and an amended PFS was produced on 2/2/2017). Plaintiff also has always complied with every order of this Court and every deficiency defendants have pointed out has been corrected. Evidence of this statement is the fact that the only thing needed to be produced according to CMO 85 and the Supplemental PFF was the newest pharmacy record. Plaintiff was never subject to any Court order to show cause in the past.

9. Plaintiff humbly states that there has been a very difficult situation in terms of communication after the crisis in Puerto Rico<sup>2</sup>, and after the fact that Plaintiff suffered another heart- related complication (and related, as previously alleged, to the use of Axiron and Androgel) and he is getting his treatment in Florida. Even so, Plaintiff is, since May 12, 2018 in full compliance with this Honorable Court's orders and respectfully asks to be excused from the appearance on May 31<sup>st</sup>, 2018.

10. On the other hand, on May 18, 2018 this Court entered the following:

*MINUTE entry before the Honorable Matthew F. Kennelly: A "mini" case management conference is set for 5/31/2018 at 2:00 PM, to coincide with the hearings on motions seeking reconsideration of dismissals with prejudice under CMO 118. The two additional topics that the Court wishes to discuss at the conference (subject to any additions the Court may make later) are (1) the defendants' "first notice of deficiency pursuant to CMO 115" (dkt. no. 2630), and (2) recently filed motions by a number of plaintiffs seeking voluntary dismissal of cases without prejudice. In addition, by no later than 5/24/2018, defendants are to file a memorandum, not to exceed 15 pages total, setting forth whether they oppose any or all of the motions seeking reconsideration of dismissals with prejudice under CMO 118 and the factual and legal basis for their opposition.*

See Docket # 2640

11. Plaintiff is not in any group this Court has identified because: (i) is not subject to CMO 118; (ii) is not subject to CMO 115<sup>3</sup> and (iii) is not seeking voluntary dismissal of his case.

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<sup>2</sup> Since hurricane Maria stroke and as of today, the island of Puerto Rico has not fully recovered. There have been constant blackouts and internet and satellite communications are still deteriorated.

<sup>3</sup> CMO 115 does not apply to Plaintiff Jose Bracetti because he was subject to CMO 110 bearing a cure date of April 27, 2018.

**WHEREFORE**, Plaintiff Jose Bracetti, respectfully requests that this Court:

- (i) Find just cause for not complying timely with CMO 110.
- (ii) Excuse Plaintiff's undersigned attorney from appearing in the "mini" case management conference set for May 31, 2018.
- (iii) Order defendants to notify deficiencies, if any, to the Supplemental PFF, as produced by Plaintiff, and according to CMO 115.
- (iv) Order any other remedy in law or equity.

**CERTIFICATION:** I hereby certify that the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record registered in the use of the CM/ECF system.

**RESPECTFULLY SUBMITTED** in San Juan, Puerto Rico, this 20<sup>th</sup> day of May, 2018.

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